

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Cheyanne Ralph	Team: Squad #16	CCRB Case #: 201707398	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 08/26/2017 6:40 PM	Location of Incident: 222 East 34th Street	Precinct: 17	18 Mo. SOL 2/26/2019	EO SOL 2/26/2019	
Date/Time CV Reported Fri, 09/08/2017 6:43 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Fri, 09/08/2017 6:43 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Russell Kastin	31821	927018	017 PCT
2. POF Jacqueline Garcia	24543	962425	017 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POF Jacqueline Garcia	Force: Police Officer Jacqueline Garcia used physical force against § 87(2)(b)	
B.POM Russell Kastin	Force: Police Officer Russell Kastin used physical force against § 87(2)(b)	
C.POM Russell Kastin	Abuse: Police Officer Russell Kastin forcibly removed § 87(2)(b) to the hospital.	
D.POF Jacqueline Garcia	Abuse: Police Officer Jacqueline Garcia forcibly removed § 87(2)(b) to the hospital.	

3Case Summary

On September 8, 2017, § 87(2)(b) filed this complaint with the Civilian Complaint Review Board (CCRB) in person. On August 26, 2017, at approximately 6:40 p.m., PO Russell Kastin and PO Jacqueline Garcia of the 17th Precinct responded to a dispute inside of a CVS store located at 222 East 34th Street, in Manhattan. The following allegations resulted:

PO Jacqueline Garcia used physical force against § 87(2)(b) (**Allegation A: Force**, § 87(2)(g)). PO Russell Kastin used physical force against § 87(2)(b) (**Allegation B: Force**, § 87(2)(g)). PO Russell Kastin forcibly removed § 87(2)(b) to the hospital (**Allegations C: Abuse of Authority**, § 87(2)(g)). PO Jacqueline Garcia forcibly removed § 87(2)(b) to the hospital (**Allegation D: Abuse of Authority**, § 87(2)(g)).

There was no video evidence of the incident.

Findings and Recommendations

Allegation (A) Force: Police Officer Jacqueline Garcia used physical force against § 87(2)(b)

Allegation (B) Force: Police Officer Russell Kastin used physical force against § 87(2)(b)

§ 87(2)(b) an § 87(2)(b) old male, has indicated to the CCRB on numerous occasions that he has been diagnosed with Parkinson's, a dementing disease. He has some cognitive decline in the context of his Parkinson's disease and with and his language barrier, as noted in CCRB § 87(2)(b) and in the civilian CCRB history section below. When § 87(2)(b) filed this complaint, § 87(2)(b) misreported the date of incident, incident location, and the number of officers present.

§ 87(2)(b) provided a sworn statement on September 8, 2017 (Board Review 01), with the assistance of a translator, and testified that on August 26, 2017, he entered a CVS Pharmacy to dispose his water bottles. When he attempted to do so a store employee told him that he could not. § 87(2)(b) stated to the CCRB that the CVS employees never informed him that he could not come into the store. He later said that a store manager told him that the store would not accept his bottles. § 87(2)(b) in response pointed to a sign on the wall which indicated that the store was accepting bottles at that time. The store manager in response told § 87(2)(b) to go home. An unidentified individual, who stood next to the manager then called 911 in response to this conversation. § 87(2)(b) did not indicate whether this individual was a store employee or a customer. When officers arrived, an officer immediately approached § 87(2)(b) and told him that he had to go to the hospital. § 87(2)(b) replied, "Why? I am a senior citizen. I have accrued medical bills from the hospital during my previous incidents." § 87(2)(b) was then handcuffed. Four officers were involved in handcuffing § 87(2)(b) came to the ground because PO Garcia, whom he described as a white female, pushed him onto the ground, after he was already handcuffed. He later said that while an officer was placing him in handcuffs, PO Garcia placed her hand near his lower back and pushed him to the ground. When § 87(2)(b) fell, his knees and face made contact with the ground. § 87(2)(b) was not making any movements with

his body before PO Garcia did this, as he complied with giving his hands to the officers to be handcuffed. The officers then picked § 87(2)(b) up from the ground and escorted him out of the store. § 87(2)(b) later said that he was never picked up and instead was dragged out of the store while still on his knees for approximately 15 minutes, causing him to sustain a bruise near his left eye (Board Review 02).

§ 87(2)(b)'s medical records from August 27, 2017, note that § 87(2)(b) arrived at the hospital on August 26, 2017, and stated that he went to a CVS store to exchange recyclables for money, and was told that he could not because it was after the scheduled time for accepting bottle deposits. He then followed staff around because of their poor work ethic, and an employee called the police. The police came and told § 87(2)(b) that he was going to the hospital but refused to let him know why. They then threw him to the ground and he suffered an injury to the left side of his forehead just above his eye. When § 87(2)(b) was asked if he provoked the police or resisted, § 87(2)(b) said "All I did was ask why and then he grabbed me and threw me to the ground." § 87(2)(b) did not allege that he was dragged out of the store, as his chief complaint was that the police pushed him (Privileged documents).

PO Garcia (Board Review 03) testified that on August 26, 2017, she and PO Russell Kastin received a harassment in progress job at a CVS store located at 222 East 34th Street, in Manhattan. This was PO Garcia's first time responding to this CVS store. Upon arrival at the store, a female manager informed officers that the employees had asked § 87(2)(b) to leave the store, and he refused to leave. She later said that the manager informed them that § 87(2)(b) was harassing the store employees. PO Garcia could not recall which officer spoke to the manager or if the manager ever informed them what specifically led them to call officers to the location. After speaking with the manager, PO Garcia and PO Kastin heard § 87(2)(b)'s voice coming from the aisle and began walking towards the sound of his voice. It was then they observed § 87(2)(b) in the middle of an aisle speaking aggressively behind a store employee who was seated on a crate stocking the shelves. § 87(2)(b) so close to the employee, that it seemed like he could have struck the employee. His aggressive tone of voice also made it seem like he could have struck the employee. PO Garcia could not recall the exact statements made by § 87(2)(b) at that time, but stated that these statements were made in a very threatening manner. She also stated that these statements were made in a combination of English and § 87(2)(b)'s native language. § 87(2)(b) also had an aggressive tone of voice as he yelled at the employee. The employee at that point said something along the lines of, "He won't leave me alone." Besides being too close to the store employee, § 87(2)(b) did not make any movements indicating that he would in fact hit the employee, and did not touch the employee.

When PO Garcia and PO Kastin observed this they asked § 87(2)(b) to leave the store because the manager did not want him inside the store any longer. PO Garcia had no difficulty communicating with § 87(2)(b) and it did not seem like § 87(2)(b) could not understand her and PO Kastin. § 87(2)(b) in response continued to speak aggressively to the employee in a

combination of English and his native language, and ignored PO Kastin and PO Garcia. PO Garcia could not recall how many times she and PO Kastin asked § 87(2)(b) to leave the store, but stated that it was more than once and that it lasted approximately two minutes. PO Garcia then placed her hand on the bicep area of § 87(2)(b)'s right arm and PO Kastin placed his hand on § 87(2)(b)'s left arm. She stated that when they placed their hands on § 87(2)(b)'s arm, "It was not done forcefully but was done to guide § 87(2)(b) in response began moving his entire upper body in a way to break the officers' grip by pulling both of his arms in front of him. He also began to flail his arms higher by pulling his arms below his waist, then pulling his arms up to his chest and flailing them in front of him, "as if he may end up swinging on me and my partner." Besides flailing his arms, § 87(2)(b) did not make any additional movements. § 87(2)(b) did not successfully break free of PO Garcia's grip and she did not see him break free of PO Kastin's grip.

PO Garcia noted that § 87(2)(b) was making verbal statements during this time however; PO Garcia could not recall the exact statements he made. Because § 87(2)(b) refused to be guided out of the store by officers, PO Garcia decided to place him in handcuffs for officers' safety. PO Garcia could not recall giving § 87(2)(b) any verbal commands before she placed him in handcuffs. PO Garcia was not intending on arresting § 87(2)(b) but was trying to gain control of the situation, and to escort § 87(2)(b) out of the store. She stated to the CCRB that, "In trying to place handcuffs on him, he kept flailing around and moving around while we were trying to gain control, and unintentionally we kind of mis-stepped and he also mis-stepped and ended up on the rug." § 87(2)(b) and officers fell onto the ground. PO Garcia could not recall if § 87(2)(b) tripped before he fell onto the ground, "I just know that he ended up on the ground." PO Garcia did not lose grip of § 87(2)(b)'s arms as they fell onto the ground and stated that her and PO Kastin were in a squat position when they fell onto the ground. When § 87(2)(b) fell onto the ground his front chest area hit the rug on the ground first, and his forehead hit the rug second causing a rug burn to the left side of his forehead. § 87(2)(b) sustained this abrasion when his forehead when he initially made contact with the ground. PO Garcia did not see his head hitting the ground at any other point. § 87(2)(b) was not bleeding, but his forehead was inflamed and red. PO Garcia did not push § 87(2)(b) onto the ground and did not see PO Kastin push § 87(2)(b) onto the ground. PO Garcia could not recall if § 87(2)(b) was handcuffed before they fell onto the ground or whether he was handcuffed while on the ground. Once on the ground, PO Garcia was able to successfully rear handcuff § 87(2)(b). PO Garcia could not recall how long § 87(2)(b) was on the ground for, but stated that it was no longer than a minute. PO Garcia denied dragging § 87(2)(b) while he was on the ground and denied seeing PO Kastin do so. She stated that at some point during the interaction, additional officers arrived. She could not recall if § 87(2)(b) was on the ground when the other officers arrived and stated that they did not assist with placing him in handcuffs.

PO Kastin (Board Review 04) provided a similar account and stated that when he arrived at the store, a female manager said, “He’s in the next row over here. Please have him leave my store.” However, the manger never informed PO Kastin why officers were called to the location. When PO Kastin went down one of the aisles of the store, he saw § 87(2)(b) yelling at one of the employees. PO Kastin did not know what § 87(2)(b) was saying to this employee as § 87(2)(b) was not speaking in English. PO Kastin provided a similar account regarding § 87(2)(b)s behavior towards the CVS employee and in response he told § 87(2)(b) that he had to leave the store. As officers tried to escort § 87(2)(b) out of the store, § 87(2)(b) began resisting because, “I had my hand on his arm just so he could come out of the store.” PO Kastin was not making any additional contact anywhere else on § 87(2)(b)s body, but stated that PO Garcia was also holding § 87(2)(b)s shoulder on the opposite side. § 87(2)(b) in response pulled his arm away from PO Kastin.

PO Kastin further stated that as § 87(2)(b) was walking out of the store, he stopped approximately three times like he wanted to remain inside the store. Each time, PO Kastin said, “We gotta go.” After the third or fourth time, PO Kastin felt like § 87(2)(b) was going to hurt either him or PO Garcia and decided to place § 87(2)(b) in handcuffs. PO Kastin placed § 87(2)(b) in handcuffs so he could be removed to the hospital as an emotionally disturbed person because § 87(2)(b) was getting angry and refused to leave the store. PO Kastin believed § 87(2)(b) was getting angry because of his tone of voice after the fourth time he stopped walking towards the store exit. Because of this PO Kastin considered § 87(2)(b) to be a danger to himself and others. When PO Kastin attempted to place § 87(2)(b) in handcuffs, he fell down onto the ground. § 87(2)(b) remained on the ground for 30 seconds and no handcuffs were on him when he fell to the ground. No handcuffs were placed on § 87(2)(b) before this because PO Kastin was intending to let the situation go and was just escorting § 87(2)(b) out of the store. PO Kastin did not see any officer push him onto the ground and did not push § 87(2)(b) onto the ground. During this time, PO Garcia was assisting by helping PO Kastin place § 87(2)(b)s left arm in handcuffs because § 87(2)(b) was physically refusing to give his arm by holding his hands to his side and kept making them stiff. § 87(2)(b) was not doing anything else with his body before he fell onto the ground. § 87(2)(b) fell onto his knees then fell forward onto his head onto the ground causing him to hit the right side of his forehead on the carpet. § 87(2)(b) did not refuse to get up off of the ground. PO Kastin did not see PO Garcia drag § 87(2)(b) while on the ground. PO Kastin stated that once § 87(2)(b) was picked up from the ground, he and PO Garcia escorted him out of the store. At that time the ambulance and additional units began arriving. PO Kastin could not recall which officers arrived but stated that they did not have any interaction with § 87(2)(b).

All interviewed parties agreed that § 87(2)(b) came to the ground as the officers placed him in handcuffs. However § 87(2)(b) and PO Garcia provided disparate accounts regarding whether unnecessary force was used after he was handcuffed. § 87(2)(b) stated that after he was handcuffed, a PO Garcia pushed him to the ground, and once on the ground, he was dragged by

officers. PO Garcia stated that because § 87(2)(b) kept flailing his arms during the handcuffing process, he fell onto the ground as a result of a mis-step, and denied dragging him out of the store. PO Kastin also denied seeing PO Garcia push § 87(2)(b) onto the ground and denied dragging

§ 87(2)(b)

§ 87(2)(g)

Allegation (C) Abuse of Authority: Police Officer Russell Kastin forcibly removed § 87(2)(b) to the hospital.

Allegation (D) Abuse of Authority: Police Officer Jacqueline Garcia forcibly removed § 87(2)(b) to the hospital.

It is undisputed that § 87(2)(b) was removed to § 87(2)(b) Hospital. § 87(2)(b) has a history of similar behavior and forcible removed to the hospital as explained in the civilian CCRB history section below.

The § 87(2)(b) Hospital medical records pertaining to § 87(2)(b)'s visit to the hospital on § 87(2)(b) revealed the following: § 87(2)(b) noted that considering the patient's poor frustration tolerance and behavioral control in context of being told by business staff that he can not exchange his recyclables resulting in readmission twelve days post discharge, § 87(2)(b) requires inpatient hospitalization for safety, stabilization, and psychoeducation on how to maintain self safely in community (Privileged documents).

PO Kastin (Board Review 04) stated that an ambulance was called to the scene because he and PO Garcia decided that § 87(2)(b) was an emotionally disturbed person because he was refusing to walk out of the CVS store and because of his tone of voice during their interaction. § 87(2)(b) was not considered to be extremely violent during this incident, but has been extremely violent during his interactions involving other officers assigned to his command. PO Kastin was concerned for § 87(2)(b)'s safety and his own safety, and did not suspect § 87(2)(b) of using drugs or alcohol. When the ambulance arrived § 87(2)(b) had calmed down and there was no difficulty escorting him to the ambulance. The EMTs confirmed that § 87(2)(b) was an emotionally disturbed person because, "We said that he was acting irrational inside the CVS. I explained why we cuffed him and they said alright, we have dealt with him before." § 87(2)(b) also recognized the EMTs due to past hospital visits. PO Kastin was able to find out what happened between § 87(2)(b) and the store employees after the ambulance arrived, but could not recall what he was told at the time of his interview he just knew that they did not want § 87(2)(b) inside the store and wanted to fill out a "No trespass" affidavit.

PO Garcia (Board Review 03) stated that she did not have any discussion with PO Kastin before he called the ambulance, and could not recall them having any conversation about § 87(2)(b)'s injury before the ambulance was called. When EMS arrived, § 87(2)(b) continued to be verbally

aggressive and they explained to the EMTs that the behavior he was displaying was similar to how he was acting when they first arrived. At that point, PO Garcia, PO Kastin, and the EMTs decided that § 87(2)(b) was an emotionally disturbed person. Due to the abrasion he sustained and his verbal aggressiveness, the EMTs stated that § 87(2)(b) should be removed to the hospital. Besides the fact that § 87(2)(b) ignored their request to leave the location, because he was considered to be an emotionally disturbed person during his previous interactions with officers led PO Garcia to believe that § 87(2)(b) was an emotionally disturbed person.

She also stated that during the incident Sgt. Baqar Shah of the 17th Precinct who was assigned as the Patrol supervisor on the date in question, responded to the CVS store. When PO Garcia informed him of § 87(2)(b)'s behavior, their actions, and § 87(2)(b)'s injuries, Sgt. Shah instructed either her or PO Kastin to escort § 87(2)(b) to the hospital. She could not recall if he provided them with any additional instructions at that time.

Aided Report #2017-017-001173 (Board Review 05) prepared by PO Kastin on the date of incident states that at time and place of occurrence, the Aided individual--identified as § 87(2)(b) was verbally harassing employees inside the store at above location and was asked to leave but did not. When trying to place handcuffs on emotionally disturbed person, he did hit his head on carpeted floor and did cut his forehead.

NYPD Patrol Guide Procedure 221-13 defines an emotionally disturbed person as a person who appears to be mentally ill or temporarily deranged and is conducting themselves in a manner which a police officer reasonable believes is likely to result in a serious injury to themselves or other. The Patrol Guide indicates that someone determined to be an emotionally disturbed person must be removed to the hospital (Board Review 06).

New York State Mental Hygiene Law 9.41 (Board Review 07) states that an officer may take into custody... “any person who appears to be mentally ill and is conducting himself or herself in a manner which is likely to result in serious harm to the person or others. Such officer may direct the removal of such person or remove him or her to any hospital or comprehensive psychiatric emergency program, or, pending his or her examination or admission to any such hospital or program, temporarily detain any such person in another safe and comfortable place, in which event, such officer shall immediately notify the director of community services or, if there be none, the health officer of the city or country of such action.”

§ 87(2)(g)
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- § 87(2)(b)
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- Mediation, Civil, and Criminal Histories**
- This case was eligible for mediation, but the mediation process was rejected by § 87(2)(b) because of the injury he sustained as a result of this incident.
 - As of January 31, 2017, no Notice of Claim has been filed by § 87(2)(b) regarding this incident (Board Review 09).
 - § 87(2)(b);§§ 86(1)(3)(4);§ 87(2)(c)

Squad No.: ___16___

Investigator: _____
 Signature Print Title & Name Date

Squad Leader: _____
 Signature Print Title & Name Date

Reviewer: _____
 Signature Print Title & Name Date